INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	1
Statute of the United States the validity of which is involved	2
Date of the judgment sought to be reviewed and date upon which application for appeal was presented	2
Nature of the case and rulings below	3

Table of Cases Cited.

Bunch v. Cole, 263 U. S. 250, 68 L. Ed. 290	4
Dahnke-Walker Milling Company v. Bondurant, 257 U. S. 282, 66 L. Ed. 239	4
Lytle v. Fulotka, 105 Okla. 86, 233 Pac. 456	3

Statutes Cited.

Act of Congress of April 12, 1926, Chapter 115, Section 2 (44 Stat. 239)	1
United States Code, Title 28, Section 344	1
Section 861a	1

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 142

NOAH STEWART,

Appellant,

vs.

ROBERT KEYES ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA.

STATEMENT, PURSUANT TO RULE 12, AS TO JURISDICTION OF THE UNITED STATES SUPREME COURT UPON APPEAL IN THIS CAUSE.

Pursuant to Supreme Court Rule 12, Noah Stewart, the above appellant, files this, his statement, disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment appealed from herein, as follows:

a. The statutory provisions believed to sustain the jurisdiction are sections 861a and 344 of Title 28 of the United States Code in that the Supreme Court of Oklahoma decided against the validity of a statute of the United States.

b. The statute of the United States the validity of which is involved is section 2, chapter 115 of the Act of Congress of April 12, 1926, 44 Stat. 239, which reads as follows:

> "Sec. 2. The statutes of limitations of the State of Oklahoma are hereby made and declared to be applicable to and shall have full force and effect against all restricted Indians of the Five Civilized Tribes, and against the heirs or grantees of any such Indians, and against all rights and causes of action heretofore accrued or hereafter accruing to any such Indians or their heirs or grantees, to the same extent and effect and in the same manner as in the case of any other citizen of Oklahoma, and may be pleaded in bar of any action brought by or on behalf of any such Indian, his heirs or grantees, either in his own behalf or by the Government of the United States, or by any other party for his or her benefit, to the same extent as though such action were brought by or on behalf of any other citizen of said state: Provided, That no cause of action which heretofore shall have accrued to any such Indian shall be barred prior to the expiration of a period of two years from and after the approval of this Act, even though the full statutory period of limitation shall already have run or shall expire during said two years' period, and any such restricted Indian, if competent to sue, or his guardian, or the United States in his behalf, may sue upon any such cause of action during such two years' period free from any bar of the statutes of limitations."

c. The date of the judgment sought to be reviewed is March 27, 1934, at which time the judgment of the Supreme Court of Oklahoma became final by reason of the overruling of the petition for rehearing. The opinion so made final was filed February 20, 1934. The date upon which the application for appeal is presented is the 11th day of June, 1934. The appeal is from the final judgment of the highest court of the State of Oklahoma.

The record in this case shows that 160 acres of land were allotted to Lizzie Toney, a restricted full-blood Creek Indian, and patents were issued to her heirs. The plaintiff, Noah Stewart, took a one-half interest in said allotment. He was an enrolled, full-blood restricted Indian. On July 1, 1916, one John A. Jacobs acting as purported guardian of Noah Stewart, who was then of full age, purported to sell his half interest in said land for the sum of $600.00. On April 11, 1928, plaintiff filed in the District Court of Seminole County, Oklahoma, a suit to recover his interest in the allotment, contending the guardian's deed was wholly void. The trial court rendered judgment against him and he appealed. The defendants relied upon the statute of limitations as a complete defense to the action. That defense was sustained by the Supreme Court of the State of Oklahoma. Plaintiff contended that he was affirmatively granted the right to bring his action free from any bar of the statute of limitations by the said statute of the United States and especially by the proviso thereof:

> "Provided, That no cause of action which heretofore shall have accrued to any such Indian shall be barred prior to the expiration of a period of two years from and after the approval of this Act, *even though the full statutory period of limitation shall already have run* or shall expire during said two years' period, and any such restricted Indian, if competent to sue, or his guardian, or the United States in his behalf, may sue upon any such cause of action during such two years' period free from any bar of the statutes of limitations."

Ignoring its prior decision in 1925 in *Lytle* v. *Fulotka*, 105 Okla. 86, 233 Pac. 456, that the Oklahoma statute of limitations had no application where a restricted Indian brought a suit to recover land sold at a void guardian's sale at a time when he was an adult, the Oklahoma Supreme

Court held that in this case the bar of the statute of limitations had become complete prior to the date of the passage of said Act of Congress, that to allow said statute to remove the bar of the statute of limitations would be to deprive the defendants of their title to the land in controversy without due process of law. It quoted approvingly as the basis for its decision the following:

> "It may, therefore, very well be held that, in an action to recover real or personal property, where the question is as to the removal of the bar of the statute of limitations by a legislative act passed after the bar has become perfect, such act deprives the party of his property without due process of law. The reason is, that, by the law in existence before the repealing act, the property had become the defendant's. Both the legal title and the real ownership had become vested in him, and to give the act the effect of transferring this title to plaintiff, would be to deprive him of his property without due process of law."

The opinion of the Oklahoma Supreme Court plainly holds that the portion of the statute of the United States, which gives every restricted Indian two years after the approval of the Act in which to bring any suit which theretofore shall have accrued to such Indian,

> "even though the full statutory period of limitation shall already have run"

is invalid because the effect of this portion of the statute, if enforced, would be to take property without due process of law.

The effect of the decision of the Oklahoma Supreme Court was to hold said statute of the United States invalid so far as the right of the plaintiff was concerned. *Dahnke-Walker Milling Company* v. *Bondurant*, 257 U. S. 282, 66 L. Ed. 239, and *Bunch* v. *Cole*, 263 U. S. 250, 68 L. Ed.

290, hold that for purposes of review by writ of error a State court holds a State statute valid whenever it enforces the statute. Conversely it must be deemed to hold a statute of the United States invalid when it refuses to give force to the statute, especially when such refusal is accompanied by a statement that to give effect to the plain language of the statute would be to deprive defendants of their property without due process of law.

That the statute by its plain terms, if valid, gave appellant the right to bring his action

"free from any bar of the statutes of limitations"

is not open to controversy. The only ground on which the right asserted by the appellant could in good faith be denied would be that the statute is invalid. The opinion of the Oklahoma Supreme Court, by necessary implication, says that the statute is invalid.

Further, its holding for purposes of review must be deemed based upon the only ground which the Oklahoma Supreme Court could reasonably have acted, if that court acted in good faith, which is that the statute is invalid.

Respectfully submitted,

WILLIAM NEFF,
Counsel for Appellant.